



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

September 17, 2010

Mr. R. Brooks Moore  
Assistant General Counsel  
The Texas A&M University System  
200 Technology Way Suite 2079  
College Station, Texas 77845-3424

OR2010-14109

Dear Mr. Moore:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 394247 (TAMU Request No. 10-342).

Texas A&M University (the "university") received a request for records pertaining to the conference realignment negotiations and the Big 12 Conference ("Big 12") negotiations from May through July 2010. You state you have released some information to the requestor. You claim the submitted information is excepted from disclosure under sections 552.104 and 552.137 of the Government Code. You also believe that some of the submitted information may implicate the interests of the Big 12. You inform us that the Big 12 was notified of this request for information and of its right to submit arguments to this office as to why the requested information should not be released.<sup>1</sup> We received correspondence from

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<sup>1</sup>See Gov't Code § 552.305(d); Open Records Decision No. 542 (1990) (statutory predecessor to Gov't Code § 552.305 permitted governmental body to rely on interested third party to raise and explain applicability of exception to disclosure under certain circumstances).

an attorney for the Big 12. We have considered all of the submitted arguments and reviewed the submitted information.<sup>2</sup>

Initially, we note some of the submitted information is not responsive to the instant request, as it was created outside of the date range specified in the request. This decision does not address the public availability of the non-responsive information, which we have marked, and it need not be released in response to the present request.

Next, we consider the Big 12's arguments with regard to the submitted responsive information. We understand the Big 12 to contend that some of the information in question is not subject to disclosure under the Act. Section 552.021 of the Government Code provides for public access to "public information," *see* Gov't Code § 552.021, which is defined by section 552.002 of the Government Code as "information that is collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business: (1) by a governmental body; or (2) for a governmental body and the governmental body owns the information or has a right of access to it." *Id.* § 552.002(a). Thus, information that is collected, assembled, or maintained by a third party may be subject to disclosure under the Act if a governmental body owns or has a right of access to the information. *See* Open Records Decision No. 462 (1987); *cf.* Open Records Decision No. 499 (1988). We understand the Big 12 to contend that its communications with the members of the Big 12's board of directors, in their capacities as members of the board, were not collected, assembled, or maintained in connection with the transaction of any official business of the university. Having considered the Big 12's arguments and reviewed the information at issue, we find that the information we have marked was not "collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business" by or for the university. Gov't Code § 552.002; *see* Open Records Decision No. 635 (1995) (statutory predecessor not applicable to personal information unrelated to official business and created or maintained by state employee involving *de minimis* use of state resources). We therefore conclude that the marked information is not subject to the Act and need not be released in response to the instant requests for information.<sup>3</sup>

We also understand the Big 12 to contend that the remaining responsive information is not subject to the Act because the information was generated by the Big 12, which is not a governmental body subject to the Act. *See* Gov't Code § 552.003(1)(A) (defining

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<sup>2</sup>This letter ruling assumes that the submitted representative samples of information are truly representative of the requested information as a whole. This ruling neither reaches nor authorizes the university to withhold any information that is substantially different from the submitted information. *See* Gov't Code §§ 552.301(e)(1)(D), .302; Open Records Decision Nos. 499 at 6 (1988), 497 at 4 (1988).

<sup>3</sup>As we are able to make this determination, we need not address the remaining arguments against disclosure of the marked information.

“governmental body”). We note, however, that the information at issue was sent to the university’s president and the university’s athletic director and is in the university’s possession. Moreover, the university has submitted this information as being subject to the Act. We find that the university collected, assembled, or maintains this information in connection with the transaction of its official business. We therefore conclude that the remaining responsive information is subject to the Act and must be released, unless the university or the Big 12 demonstrate that the information falls within an exception to disclosure under the Act. *See id.* §§ 552.006, .021, .301, .302.

The university and the Big 12 both raise section 552.104 of the Government Code for the remaining responsive information. Because section 552.104 only protects the interests of a governmental body and does not protect the interests of third parties, we will not consider the Big 12’s claim under section 552.104. *See* Open Records Decision No. 592 at 8 (1991). However we will address the university’s claim under section 552.104 of the Government Code. Section 552.104 of the Government Code protects from required public disclosure “information that, if released, would give advantage to a competitor or bidder.” Gov’t Code § 552.104. The purpose of section 552.104 is to protect the interests of a governmental body in competitive bidding situations where the governmental body wishes to withhold information in order to obtain more favorable offers. *See* ORD 592. Section 552.104 protects information from disclosure if the governmental body demonstrates potential harm to its interests in a particular competitive situation. *See* Open Records Decision No. 463 (1987). Generally, section 552.104 does not except bids from disclosure after bidding is completed and the contract has been awarded. *See* Open Records Decision No. 541 (1990). However, in some situations, section 552.104 will operate to protect from disclosure bid information that is submitted by successful bidders. *See id.* at 5 (recognizing limited situation in which statutory predecessor to section 552.104 continued to protect information submitted by successful bidder when disclosure would allow competitors to accurately estimate and undercut future bids).

The university states that although the basic terms of the university’s agreement with the Big 12 are in place, negotiations are not completed and a signed contract is not yet in place. The university asserts release of the information at issue at this stage would harm the university’s ability to negotiate a final agreement. Based on the university’s representations, we conclude the university may withhold the remaining responsive information under section 552.104 of the Government Code until such time as a contract has been executed. *See* Open Records Decision No. 170 at 2 (1977) (release of bids while negotiation of proposed contract is in progress would necessarily result in an advantage to certain bidders at the expense of others and could be detrimental to public interest in the contract under negotiation). As we are able to make this determination, we need not address the remaining arguments against disclosure.

This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at [http://www.oag.state.tx.us/open/index\\_orl.php](http://www.oag.state.tx.us/open/index_orl.php), or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Amy L.S. Shipp  
Assistant Attorney General  
Open Records Division

ALS/tp

Ref: ID# 394247

Enc. Submitted documents

c: Requestor  
(w/o enclosures)

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